



Rule(s) Review Checklist Addendum
(This form must be filled out electronically.)

This form is to be used only if the rule(s) was/were previously reviewed, and has/have not been amended/repealed subsequent to that review.

All responses should be in **bold** format.

Document Reviewed (include title): **WAC 458-20-124 (Restaurants, cocktail bars, taverns and similar businesses)**

Date last reviewed: **July 7, 1999**

Current Reviewer: **Mark Mullin**

Date current review completed: **October 18, 2001**

Is this document being reviewed at this time because of a taxpayer or association request? (If "YES", provide the name of the taxpayer/association and a brief explanation of the issues raised in the request). **YES** ☐ **NO** ☒

Type an "x" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

1. Briefly describe the subject matter of the rule(s):

Rule 124 explains the application of B&O, retail sales, and use taxes to restaurants, cocktail bars, taverns, and similar businesses. It discusses the sale of meals, beverages and food at prices inclusive of sales tax. It also explains how discounted and promotional meals are taxed.

2. Related statutes, interpretive statements, court decisions, BTA decisions, and WTDs: (Excise Tax Advisories (ETAs), Property Tax Advisories (PTAs), Property Tax Bulletins (PTBs) and Audit Directives (ADs) are considered interpretive statements.)

YES	NO	
	X	Are there any statutory changes subsequent to the previous review of this rule that should be incorporated?
	X	Are there any interpretive statements not identified in the previous review of this rule that should be incorporated? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any interpretive statements that should be repealed because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any Board of Tax Appeal (BTA) decisions, court decisions, or



		Attorney Generals Opinions (AGOs) subsequent to the previous review of this rule that provide information that should be incorporated into this rule?
	X	Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) subsequent to the previous review of this rule that provide information that should be incorporated into the rule?
	X	Are there any changes to the recommendations in the previous review of this rule with respect to any of the types of documents noted above? (An Ancillary Document Review Supplement should be completed if any changes are recommended with respect to an interpretive statement.)

If the answer is “yes” to any of the questions above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

3. Additional information: Identify any additional issues (other than that noted above or in the previous review) that should be addressed or incorporated into the rule. Note here if you believe the rule can be rewritten and reorganized in a more clear and concise manner.

Rule 124 is currently written in a clear and concise manner. The rule provides accurate and useful tax reporting information. Thus, there is no immediate need to amend the rule. However, several issues should be addressed the next time the rule is revised. Consideration should be given to addressing the tax treatment of pizza sales (whether prepared, baked and delivered, or prepared and sold unbaked), banquet room rentals, cover charges, gift certificates, and rentals of karaoke equipment and “karaoke rooms.” Finally, readers should be advised of the litter and syrup taxes and referred to Rules 243 and 255.

4. LISTING OF DOCUMENTS REVIEWED: The reviewer need identify only those documents that were not listed in the previous review of the rule(s). (Use “bullets” with any lists, and include documents discussed above. Citations to statutes, interpretive statements, and similar documents should include titles. Citations to Attorney General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).)

Statute(s) Implemented: **None**

Interpretive statements (e.g., ETAs and PTAs):

- **ETA 101 “Cash Shortages and Cash Overages”**

Court Decisions: **None**

Board of Tax Appeals Decisions (BTAs):

- **Sakuma v. Dep’t of Rev., Docket Nos. 98-87 and 98-88 (1999). This case involved an appeal of Det. No. 98-141, 18 WTD 333 (1999) which is described below.**



- **Kim v. Dep't of Rev., Docket No. 96-64 (1998).** This case involved an appeal of Det. No. 95-138, 16 WTD 33 (1995) which is described below.

Administrative Decisions (e.g., WTDs):

- **Det. No. 00-092, 20 WTD 47 (2001).** This determination involved the tax treatment of employee meals and over-collected sales tax by a taxpayer operating several fast food restaurants.
- **Det. No. 99-104, 19 WTD 76 (2000).** This determination involved a taxpayer that operated a number of restaurants who protested use tax imposed on carpet it purchased in another state and subsequently used in Washington; use tax imposed on equipment it purchased with the intent to execute a sale/leaseback; and the assessment of retail sales tax it over-collected from customers and did not remit to the Department.
- **Det. No. 98-141, 18 WTD 333 (1999).** This determination addressed the taxability of rentals of karaoke equipment and "karaoke rooms."
- **Det. No. 95-138, 16 WTD 33 (1995).** In this determination, a restaurant protested the assessment of retailing B&O and retail sales taxes on unreported restaurant income developed from the projection of an error rate found in review of a mutually agreed upon sample.

Attorney General's Opinions (AGOs): **None**

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):

- **Restaurant Guide**
- **Tavern Guide**

5. Review Recommendation:

- _____ **Amend**
- _____ **Repeal** (Appropriate when repeal is not conditioned upon another rule-making action.)
- X** **Leave as is** (Appropriate even if the recommendation is to incorporate the current information into another rule.)
- _____ **Begin the rule-making process for possible revision.** (Applies only when the Department has received a petition to revise a rule.)





Explanation of recommendation: Provide a brief summary of your recommendation, whether the same as or different from the original review of the document(s). If this recommendation differs from that of the previous review, explain the basis for this difference.

If recommending that the rule be amended, be sure to note whether the basis for the recommendation is to:

- Correct inaccurate tax-reporting information now found in the current rule;
- Incorporate legislation;
- Consolidate information now available in other documents (e.g., ETAs, WTDs, court decisions); or
- Address issues not otherwise addressed in other documents (e.g., ETAs, WTDs, court decisions).

There is no immediate need to amend Rule 124. However, when this rule is next revised, the issues identified in subsection 3 of this review addendum as well as the original rule review should be addressed.

6. Manager action: Date: _____

_____ Reviewed and accepted recommendation

Amendment priority:

- _____ 1
- _____ 2
- _____ 3
- _____ 4